

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

DANNY LEE WILLIAMS, )  
Plaintiff, ) Case No. 3:09-cv-0158-LRH-VPC  
vs. )  
ROBERT BANNISTER, et al., )  
Defendants. )

**ORDER**

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted an Application to Proceed *in Forma Pauperis* (#1) and a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983. The Court has screened the complaint and finds that it must be dismissed.

**I. Application to Proceed *in Forma Pauperis***

Based on the financial information provided, the Court finds that Plaintiff shall not be required to pay an initial partial filing fee. However, even if this action is dismissed, the full filing fee of \$350 must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

**II. Screening Standard Pursuant to 28 U.S.C. § 1915A**

The Court must screen plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A. Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir.

1 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that  
 2 a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
 3 violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42,  
 4 48 (1988).

5 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation  
 6 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of  
 7 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may  
 8 be granted, or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C.  
 9 § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is  
 10 provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under  
 11 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a court dismisses  
 12 a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions  
 13 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could  
 14 not be cured by amendment. *See Cato v. United States*, 70 F.3d. 1103, 1106 (9th Cir. 1995).

15 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*  
 16 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim  
 17 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that  
 18 would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making  
 19 this determination, the Court takes as true all allegations of material fact stated in the complaint, and the  
 20 Court construes them in the light most favorable to the plaintiff. *See Warshaw v Xoma Corp.*, 74 F.3d  
 21 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less stringent standards than  
 22 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404  
 23 U.S. 519, 520 (1972) (per curiam). While the standard under Rule 12(b)(6) does not require detailed  
 24 factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp.*  
 25 *v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic recitation of the elements of a cause of action  
 26 is insufficient. *Id.*, *see Papasan v. Allain*, 478 U.S. 265, 286 (1986).

27 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the  
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1 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal  
 2 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims of  
 3 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual  
 4 allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28  
 5 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

6 **III. Screening of the Complaint**

7 Plaintiff sues defendants Robert Bannister, Joe Brackbill, Max Leon Carter, Karen Gedney, Mr.  
 8 Mar, and Jake Murphy in their individual capacities for violation of his Eighth and Fourteenth  
 9 Amendment rights. He claims that his rights were violated when he was told that he had an enlarged  
 10 heart but prison officials refused his request to see a cardiologist. After subsequent x-rays, Plaintiff was  
 11 then told that there is nothing wrong. Plaintiff alleges that he was denied medical care and continues  
 12 to suffer physical pain and extreme emotional distress. Plaintiff seeks compensatory and punitive  
 13 damages.

14 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison  
 15 conditions must involve "the wanton and unnecessary infliction of pain." *Rhodes v. Chapman*, 452 U.S.  
 16 337, 347 (1981). A prisoner's claim of inadequate medical care does not constitute cruel and unusual  
 17 punishment unless the mistreatment rises to the level of "deliberate indifference to serious medical  
 18 needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The "deliberate indifference" standard involves  
 19 an objective and a subjective prong. First, the alleged deprivation must be, in objective terms,  
 20 "sufficiently serious." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing *Wilson v. Seiter*, 501 U.S.  
 21 294, 298 (1991)). Second, the prison official must act with a "sufficiently culpable state of mind," which  
 22 entails more than mere negligence, but less than conduct undertaken for the very purpose of causing  
 23 harm. *Farmer v. Brennan*, 511 U.S. at 837. A prison official does not act in a deliberately indifferent  
 24 manner unless the official "knows of and disregards an excessive risk to inmate health or safety." *Id.*

25 In applying this standard, the Ninth Circuit has held that before it can be said that a prisoner's  
 26 civil rights have been abridged, "the indifference to his medical needs must be substantial. Mere  
 27 'indifference,' 'negligence,' or 'medical malpractice' will not support this cause of action.' *Broughton*

v. *Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980), *citing Estelle*, 429 U.S. at 105-06. “[A] complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.” *Estelle v. Gamble*, 429 U.S. at 106; *see also Anderson v. County of Kern*, 45 F.3d 1310, 1316 (9th Cir. 1995); *McGuckin v. Smith*, 974 F.2d 1050, 1050 (9th Cir. 1992), *overruled on other grounds*, *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997)(en banc). Even gross negligence is insufficient to establish deliberate indifference to serious medical needs. *See Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990). A prisoner’s mere disagreement with diagnosis or treatment does not support a claim of deliberate indifference. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989).

Here, plaintiff has alleged nothing more than a mere disagreement with diagnosis or treatment. Plaintiff has not stated a claim of deliberate indifference.

#### IV. Conclusion

Plaintiff has failed to state a claim upon which relief may be granted. Therefore, this action must be dismissed.

Based on the foregoing, and with good cause appearing,

**IT IS THEREFORE ORDERED** that Plaintiff’s Application to Proceed *in Forma Pauperis* (#1) is **GRANTED**. Plaintiff shall not be required to pay an initial partial filing fee. However, even if this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

**IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this action to conclusion without the necessity of prepayment of any additional fees or costs or the giving of security therefor. This Order granting *forma pauperis* status shall not extend to the issuance of subpoenas at government expense.

**IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the preceding month’s deposits to Plaintiff’s account (inmate #62471), in the months that the account exceeds \$10.00, until the full \$350 filing fee has been paid for this action. The Clerk of the Court shall

1 send a copy of this Order to the Finance Division of the Clerk's Office. The Clerk shall also send a copy  
2 of this Order to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,  
3 P.O. Box 7011, Carson City, NV 89702.

**IT IS HEREBY ORDERED** that the Clerk of the Court shall **FILE** the complaint.

5           **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice for failure  
6 to state a claim upon which relief can be granted.

7           **IT IS FURTHER ORDERED** that Plaintiff's Motion Requesting Permission to Submit  
8 Plaintiff's First Request for Production of Documents (#1-3) is **DENIED**.

9           **IT IS FURTHER ORDERED** that Plaintiff's Motion for Appointment of Counsel (#3) is  
10          **DENIED.**

11       **IT IS FURTHER ORDERED** that the Clerk of the Court shall **CLOSE THIS CASE** and  
12 **ENTER JUDGMENT ACCORDINGLY.**

13 || DATED this 28<sup>th</sup> day of July, 2009.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE